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Legal Certainty between Tradition and Algorithm – A Comparative Analysis

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Abstract: This article analyzes in depth the concept of legal certainty in the context of the confrontation between classical legal theory and modern algorithmic governance systems based on artificial intelligence. Starting from the premise that legal certainty is essential for the rule of law, the paper highlights the epistemological and normative tensions between traditional models – based on clear rules, interpretive reasoning and human responsibility – and the new forms of decision-making generated by opaque, predictive and distributed algorithms. The essential differences in terms of the origin of the norm, transparency, legitimacy, accountability and democratic control are analyzed, and a comparative framework on ten epistemological dimensions is proposed. The paper proposes a series of legislative, institutional, professional and technical reforms aimed at protecting the fundamental values of law in the digital age. At the same time, urgent research directions are identified, such as the development of algorithmic explanation standards, the reconfiguration of legal education and the rethinking of the epistemology of law in the context of automation. The article argues that only through a critical and responsible integration of artificial intelligence can legal certainty be maintained as the foundation of human dignity and institutional legitimacy.

Keywords: legal certainty; artificial intelligence; algorithmic governance; epistemology of law; digital law

1. Introduction

Legal certainty is one of the fundamental values of modern law, indispensable for the functioning of the rule of law and maintaining citizens' trust in legal institutions. It presupposes the existence of clear, predictable and coherently applied rules, so that individuals can adjust their behavior according to stable and reasonable expectations. In the classical tradition of law, legal certainty is based on the text of the law, on the rational interpretation of the rules and on the authority of the courts. It is enshrined both in

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continental law – through modern codifications such as the French or German Civil Code – and in Anglo-Saxon law, where the doctrine of precedent ensures stability and continuity.

In recent decades, however, this vision has been called into question by the emergence of digital technologies and, especially, by the introduction of artificial intelligence (AI) in decision-making processes. Unlike human actors, algorithms operate on the basis of statistical and predictive models, extracted from large volumes of data, which generates a type of reasoning that is fundamentally different from the classic legal one. Additionally, some AI systems operate as "black boxes," where the decision-making process is inaccessible even to their developers. This algorithmic opacity raises serious issues regarding transparency, accountability and, implicitly, legal certainty (Liu et al., 2019).

To address these challenges, new concepts have been proposed, such as 'reasoned transparency', which does not imply a full disclosure of the decision-making mechanism, but only a procedural justification of the functioning of the system (Coglianese & Lehr, 2019). At the same time, the literature draws attention to the risk that AI undermines the foundations of the rule of law, by replacing normative legitimacy with technical performance and diluting legal clarity in favor of statistical efficiency (Edwards & Veale, 2018).

This paper aims to comparatively analyze the way in which legal certainty is defined and applied in two paradigms: the traditional, humanistic one, and the algorithmic, technological one. We will analyze the epistemological differences, normative implications and possible directions for a reconciliation between law and technology. The structure of the article includes: conceptual definition (section 2), the impact of AI on transparency and accountability (section 3), the nature of the legal decision (section 4), a systematic comparison of the two paradigms (section 5), the proposed reforms (section 6), research directions (section 7), a synoptic table with 10 epistemological dimensions and general conclusions (section 8), along with the complete bibliography (section 9).

Through this approach, the article not only aims to describe a technological transition, but to actively participate in a critical reflection on the future of law in the age of artificial intelligence.

2. Defining Legal Certainty: Classical Theory Vs. Algorithmic Governance

Legal certainty, in its classical sense, is closely linked to the idea of the rule of law, assuming that laws must be known, clear, stable and applied in a predictable way. This vision has its roots in rationalist legal modernity, influenced by Enlightenment thought and consolidated by the European codifications of the eighteenth and nineteenth centuries. Within this framework, the law is conceived as a set of clear and universal rules, applicable to all citizens and interpreted by judges logically and rationally (Markou & Deakin, 2019). The predictability of the rules allows citizens to regulate their behaviours and gives them protection against the arbitrariness of the authorities. The clarity of the rules allows judges to apply the law in a coherent way and build stable jurisprudence. In this sense, legal certainty is considered a guarantor of equality before the law and of the legitimacy of the legal system.

However, this approach is under pressure in the digital age, with the emergence and expansion of artificial intelligence in the legal field. AI systems, unlike human judges, do not "interpret" the law, but apply predictive models based on data analysis. Here comes a fundamental epistemological difference: while classical law is based on deductive reasoning, based on generally applicable rules, AI uses inductive and correlative reasoning, derived from trends observed in historical data. Thus, legal certainty is no longer guaranteed by normative clarity, but by the statistical consistency of the result. This change

produces a tension between two forms of certainty: the normative one, which is related to the law, and the algorithmic one, which is related to data and technical performance.

Another aspect that complicates the definition of legal certainty in the age of AI is the degree of transparency. In classical theory, transparency is conceptualized as accessibility of the norm and decision-making reasoning. In the case of AI, even if the source of the decision is formally available (e.g. a code or a mathematical function), it is often unintelligible to most human actors, including judges and lawyers. Thus, a reconceptualization of transparency becomes necessary: from an absolute form, to a "reasoned" one, in which the explanation of the decision is acceptable not because it is complete, but because it is sufficient for control and audit (Coglianese & Lehr, 2019).

In addition to interpretability issues, AI also raises stability issues. Algorithms can evolve over time through machine learning, which can lead to subtle or sudden changes in the way decisions are made. Therefore, stability – one of the pillars of legal certainty – is called into question. In addition, AI often operates in incomplete regulatory environments, where there are no clear legal rules on the application, control and accountability of these systems.

Therefore, defining legal certainty in the age of AI requires a profound reassessment. If in the classical paradigm the emphasis was on the text of the law, in the algorithmic paradigm we must take into account factors such as procedural transparency, auditability, functional explanation and ethical robustness. The real challenge lies in finding a balance between these two paradigms so that technological innovation does not erode the legal foundations of democratic society.

3. Transparency and Accountability in the Context of AI

Transparency and accountability are two essential principles for the fair functioning of any legal system. In classical theory, transparency means that rules are public, accessible and intelligible, and judicial decisions are reasoned in a rational and logical way. Accountability, on the other hand, means that every legal decision is made by a clearly identifiable actor – judge, public official or competent authority – who can be held accountable in the event of abuse or error. These principles are deeply intertwined: without transparency, there can be no real accountability; Without accountability, transparency becomes formal and ineffective.

In the algorithmic paradigm, both concepts are problematized. Starting with transparency, many artificial intelligence systems are considered "black boxes", in the sense that their internal logic is difficult to understand even for their developers. This technical opacity – caused either by the complexity of models (such as neural networks) or by intellectual property protection – limits the ability of users or authorities to understand how a decision is generated. In this regard, Liu et al. (2019) distinguish between two types of opacity: technical and legal. The first refers to the difficulty of understanding the algorithm, and the second to the lack of clear regulation that imposes transparency in its use.

To address these limitations, the concept of 'reasoned transparency' has been formulated (Coglianese & Lehr, 2019), which proposes an intermediate solution: it is not necessary for the algorithm to be fully transparent, but sufficiently explainable that it can be controlled and audited. Thus, instead of total transparency, functional transparency is promoted, oriented towards finality and institutional accountability. However, critics of this model point out that a partial explanation may be insufficient from the perspective of the rights of defence or the principle of legality (Edwards & Veale, 2018).

Responsibility is even more difficult to trace in the context of AI. If in a classical system the decision is made by a human actor, in the case of an algorithmic system it is often unclear who can be held

responsible: the developer, the programmer, the data provider, the institution that contracted the system or the official who uses it? Kluttz and Mulligan (2019) argue that this ambiguity creates a dilution of responsibility, which can lead to unfair decisions without a clearly accountable actor. Moreover, in practice, AI systems are often provided by private entities but used in public processes (e.g. risk assessments in justice or allocations in administration). This raises the issue of delegation of public authority without adequate democratic oversight mechanisms.

The problem is also aggravated by the lack of solid legal frameworks. Despite the existence of regulations such as the GDPR in the European Union, which provides the right to an explanation in the case of automated decisions (Art. 22), the application of this right is ambiguous and unequal. Edwards and Veale (2018) argue that, in its current form, this right is "probably not the remedy we are looking for" because it does not provide clear mechanisms for challenging or correcting automatically generated decisions.

Therefore, the issue of transparency and accountability in the context of AI is not only a technological one, but also a deeply normative one. In order for algorithmic governance to be compatible with the requirements of the rule of law, it is necessary to develop standards for explanation, auditability and decision-making traceability. Failure to do so risks compromising the legitimacy of legal institutions and diluting the protection of fundamental rights.

4. Legal Reasoning: Human vs. Algorithmic

Legal reasoning is an essential process by which general rules are applied to particular cases, in a logical, coherent and reasoned manner. In the classical tradition, this reasoning is a deliberative act, which involves interpreting the legal text in context, evaluating the evidence and applying the principles of law. Judges, lawyers and jurists are trained in normative logic, being taught to correlate norms, principles and facts in order to reach a fair and reasoned conclusion. This approach emphasizes practical intelligence, legal sensitivity, and the balance between the letter and spirit of the law (Markou & Deakin, 2019).

Instead, algorithmic reasoning works by completely different rules. Artificial intelligence does not "interpret" the law in the traditional sense, but identifies statistical patterns and correlations in historical data. Machine learning models, for example, are trained to predict the most likely outcomes based on past data, without a semantic understanding of legal concepts. Thus, instead of normative reasoning, AI offers predictive reasoning, based on empirical regularities. Esayas (2023) shows that instead of applying rules, AI "guesses" decisions based on similarity to previous cases, which creates a profound difference in logic between the two types of systems.

This difference has important consequences for the idea of justice. In the classical system, a decision is considered fair if it is the result of a balanced, rational and reasoned analysis. In the algorithmic system, a decision is "good" if it is statistically accurate, even if it cannot be justified in traditional legal terms. This "performance logic" risks replacing normative logic, especially when pursuing decision-making efficiency at the expense of comprehensibility (Selbst & Barocas, 2018).

Another problematic aspect is that AI can perpetuate and amplify systemic biases, as training models reflect past data – including historical errors or discrimination. Thus, algorithmic decisions may seem objective, but they can reproduce inequities, without users being aware of it. That is why Huq (2021) points out that the lack of explanation and responsibility in algorithmic reasoning undermines due process and equality before the law.

Moreover, algorithmic systems do not take into account the social, ethical or human context of each case. Human judges may consider extenuating circumstances, the intentions of the parties, or the symbolic dimension of a decision. AI, on the other hand, is limited to what has been fed into the training data and what can be measured and quantified. This structural limitation makes algorithmic reasoning essentially reductive.

Therefore, the difference between classical and algorithmic legal reasoning is not only one of method, but one of vision of justice. While the former is based on interpretation, argumentation, and deliberation, the latter is based on calculation, prediction, and efficiency. In a democratic system, where justice is not just an outcome, but also a process, this difference is profoundly significant. The question remains whether algorithmic reasoning can be adapted to incorporate legal and ethical criteria – or whether it should be strictly limited to auxiliary functions of the decision-making process.

5. General Comparison: Legal Certainty in the Classical vs. Algorithmic Paradigm

To truly understand the implications of introducing artificial intelligence into the legal sphere, it is essential to directly compare the two paradigms – classical and algorithmic – in terms of how they define and operationalize legal certainty. This comparison is not only a technical analysis, but a profoundly epistemological and normative one, which reveals the tensions between two fundamental ways of understanding law, reasoning and legitimacy.

In the classical paradigm, legal certainty is based on four fundamental pillars: clarity of rules, predictability of application, stability of case law and transparency of decision. These elements provide the citizen with a coherent understanding of the legal system and create a stable environment for the exercise of rights and obligations. The law is public, interpretable and, more importantly, applicable in a rational and reasoned way. The actors involved – mainly judges – are trained in the tradition of law and are accountable to a legal community and society as a whole (Markou & Deakin, 2019).

Instead, the algorithmic paradigm works on different principles. Here, the focus is on predictive accuracy, operational efficiency, and data processing capacity. Certainty is no longer the result of a clear rule, but of a "functional coherence" of the system: if the algorithm produces stable results with a high accuracy rate, it is considered valid. Instead of normative clarity, we have algorithmic performance; instead of legal interpretation, we have statistical modeling; and instead of personal responsibility, we have distributed and often diluted responsibility (Liu et al., 2019). This difference has important effects on legitimacy. In the classical system, legitimacy derives from compliance with procedures and transparency of motivation. In the AI system, legitimacy is often derived from efficiency and confirmation of results by other automated systems. Coglianese and Lehr (2019) propose the idea of "reasoned transparency" as a compromise, but even this solution involves a redefinition of the way we understand the explainability of decisions.

A concrete example of this difference is given by the application of AI in criminal justice (e.g. the COMPAS system in the USA). While judges decide based on criminal law principles and contextual assessment, COMPAS provides risk scores based on statistical correlations, without being able to justify the reasoning in legal terms. This led to decisions perceived as arbitrary or biased, even if the algorithm was technically "correct" (Angwin et al., 2016). Another major difference is related to the relationship to uncertainty. In the classical system, uncertainty is an exception, a system defect that must be eliminated. In the AI paradigm, uncertainty is structural and managed through probabilistic models. This approach completely changes the philosophy of legal decision-making: from normative certainties to predictive estimates.

However, the two paradigms should not be seen as exclusively opposites. There is the possibility of building a hybrid framework, combining the normative stability of the law with the analytical capacity of AI. For this, it is necessary to develop a set of common principles: auditability, explainable transparency, ethical standards and meaningful human control.

The conclusion of this comparison is that, although AI offers opportunities to make the legal system more efficient, it cannot substitute the validation criteria of classical law without jeopardizing the fundamental values of the rule of law. Legal certainty cannot be reduced to technological performance – it must remain anchored in accountability, accessibility and fairness.

6. Proposed Reforms to Preserve Legal Certainty in the Context of AI

Artificial intelligence is not, in itself, incompatible with the rule of law. The problem arises when technology is implemented without a clear understanding of its legal implications, without adequate control mechanisms and without adapting the fundamental principles of law to the new realities. In order to maintain legal certainty in a context where AI is becoming increasingly influential, a coherent and interconnected set of reforms is needed, targeting four pillars: normative, institutional, professional and technical-ethical.

A. Regulatory reform: legislation adapted to algorithmic decisions

Current legal regulations, such as the GDPR, provide a useful but insufficient basis for governing AI-generated or AI-assisted decisions. Article 22 of the GDPR, which provides for the right not to be subject to an exclusively automated decision, is vague, difficult to apply and does not provide a robust standard for ensuring legal certainty (Edwards & Veale, 2018). A legislative framework dedicated to decision-making AI is therefore needed, regulating:

- the right to an intelligible and contextualised explanation;
- the obligation of human review of automated decisions in sensitive areas;
- traceability of the algorithm and the decision-making chain;
- clear standards of legal liability in the event of damage;
- public registers with AI systems used in justice and administration.

A positive example in this direction is the **European** Union's AI Act, which classifies AI systems according to their risk to fundamental rights. However, this document must be complemented by specific regulations for the legal sector, which requires a high level of legitimacy and ethical sensitivity.

B. Institutional reform: supervision and algorithmic audit

To guarantee legal certainty in the age of algorithms, it is not enough to have rules – we also need to have institutions capable of applying and supervising them. The proposal consists of the establishment of independent algorithmic audit authorities, with the following attributions:

- assessment of the performance and fairness of AI systems used in the public domain;
- prior authorisation for the use of AI in the legal sphere;
- publication of transparency and impact reports;
- consultation of civil society on critical decisions.

Drawing inspiration from the field of personal data protection – where national supervisory authorities play a key role – we can imagine a similar model for AI surveillance, but adapted to its complexity and specificity.

C. Professional reform: new skills for lawyers and technology

The digital transformation requires a major change in the professional profile of the actors involved in justice. Lawyers must acquire basic technical skills, such as:

- understanding how machine learning models work;
- interpretation of algorithmic outputs;
- the ability to assess risks associated with automated decisions.

In parallel, AI developers working in the legal field must be familiar with the fundamental principles of law: legality, equality, non-discrimination, normative reasoning. This dual training is essential to create a common language between technology and justice (Kluttz & Mulligan, 2019).

Universities, magistrates' institutes and research centres must play an active role in the development of these competences, through interdisciplinary programmes and continuous training.

D. Ethical and technological reform: responsible and transparent design

Real reform cannot happen without the involvement of developers and industry. It is essential that AI systems for the legal field are designed according to the principles of "legal by design" and "ethics by design". These involve the integration from the design phase of requirements such as:

- explainability;
- auditability;
- respect for diversity and equity;
- limiting the risks of bias and discrimination.

Only in this way can we move from a reactive governance to an anticipatory and responsible one, which incorporates the requirements of legal certainty into an ever-evolving digital ecosystem.

7. Future Research Directions

In the context of the new challenges posed by algorithmic governance, clear legislative and institutional reform is essential. The European Union recently adopted the AI Act (2024), which classifies artificial intelligence systems according to the level of risk. For high-risk systems, such as those used in justice or law enforcement, strict requirements are imposed on transparency, auditing and documentation of decision-making. Similarly, the Algorithmic Accountability Act (2023) was introduced in the United States, which requires impact assessments for automated systems used in public and private contexts.

Legal certainty – in its traditional form – is put under pressure by the predictive logic of algorithmic systems. Within this framework, future research must explore not only how the law can be adapted to new technologies, but also how it can contribute to the ethical, normative and institutional shaping of these technologies. Here are some major directions of investigation:

- ✓ ***Explainable technologies and transparent AI***

A central theme for the future is the development of Explainable AI (XAI) systems that can provide understandable and verifiable reasoning, especially in contexts with legal implications. Interdisciplinary research is needed to define minimum standards of explanation, adapted to various types of public: legal specialists, citizens, control authorities. These standards are not only technical, but imply a rethinking of the principles of transparency and legitimacy in the digital age (Coglianese & Lehr, 2019).

- ✓ ***Adaptive regulation and algorithmic governance***

Another research front is represented by adaptive regulation – legislative models capable of evolving in parallel with technological development. Unlike traditional regulation, which is rigid and slow, AI requires fast, participatory, and empirical feedback-based update mechanisms. Future studies should look at how an algorithmic governance framework can be built that respects the requirements of the rule of law, but is flexible and responsive. Recent initiatives such as the AI Act can be analysed as case studies and refined according to national or sectoral contexts.

- ✓ ***Ethics of algorithmic responsibility***

Accountability in the age of AI is one of the most difficult and challenging topics. The research needs to clarify how legal liability can be established in a distributed decision system: who is liable for harm caused by an AI system? Task scheduler? The data provider? The institution that implemented the system? Or, worse, no one? These questions have direct implications for legal certainty and need to be addressed through in-depth research in civil law, criminal law, as well as technology ethics (Liu et al., 2019; Szentgáli-Tóth, 2021).

- ✓ ***Impact on the legal professions and the transformation of legal education***

An emerging and insufficiently explored direction is related to how AI will transform the roles of the legal professions. How to change the professional identity of the judge, lawyer, notary or public servant in an environment augmented by algorithms? Which skills are becoming essential? What kind of legal thinking should be cultivated in the future? These questions directly concern the legal education system and involve a thorough review of the academic curriculum and professional culture.

- ✓ ***The Epistemology of Law in the Digital Age***

Perhaps the most profound line of research concerns the epistemology of law: what does it mean to "know" in law in a world where decisions are generated by systems that do not understand legal concepts, but only statistically correlate them? Is the status of legal knowledge changing? Is it replaced by empirical, automated, non-normative knowledge? What happens to the role of interpretation, to the principle of equity, to the internal logic of law? These questions are fundamental to any legal theory that wants to remain relevant in the twenty-first century.

8. Conclusions

Legal certainty is traditionally the foundation on which the legitimacy of the rule of law is built. It requires clear rules, applied predictably, interpreted coherently and assumed by human actors in a transparent and responsible manner. However, with the advent of artificial intelligence in decision-making processes, this legal architecture is facing a profound transformation, which affects not only procedures, but even the epistemology of law.

The present paper showed that between the classical legal paradigm and algorithmic governance there are structural differences in the way the norm is produced, interpreted and applied. In the classical paradigm, norms are created by legitimate authorities, formulated in accessible language and applied through normative and reasoned reasoning. In contrast, in algorithmic logic, the "norm" becomes a prediction model derived from data; clarity is replaced by statistical performance; predictability becomes probability; and personal responsibility is replaced by distributed or, sometimes, diffuse responsibility.

The differences are even more evident if we look at essential elements: in classical law, legitimacy stems from democratic authority and rational argumentation, while in AI legitimacy is often technical, derived from the efficiency of the model. In classical law, the judge is responsible, and his decision can be appealed and controlled; in the case of AI, the decision is often opaque, indisputable and difficult to attribute to a clear entity.

At the same time, we must not look at the two paradigms as antagonistic. Despite the epistemological and functional differences, there are commonalities: both paradigms aim – at least declaratively – to maximize fairness, coherence and equity. But for this convergence to be real, AI needs to be governed by legal principles, not just technical objectives.

In order to avoid the collision between the two logics – normative and algorithmic – we propose a hybrid framework that allows:

- auditability of AI systems;
- functional explainability;
- meaningful human review;
- clear legal liability;
- integrating AI into the architecture of the rule of law, not outside of it.

At the same time, we have shown that the differences between the two paradigms can be summarized on several dimensions: the origin of the norm, clarity, transparency, legitimacy, responsibility, decision-making reasoning, democratic control and the role of the human factor. In each of these dimensions, AI introduces its own logic, which must be subject to rigorous regulation and constant critical reflection.

Table 1. Comparative Epistemological Dimensions of Legal Certainty in the Classical and Algorithmic Paradigm

Dimension	Classical law	Algorithmic governance	Example
The origin of the norm	Law voted by parliament	Model trained on historical data	GDPR Law vs. HireVue Recruitment Algorithm
Clarity of the norm	Normative, coherent language	Opaque source code, difficult to interpret	The language of a law vs. the code of a relapse prediction algorithm
Predictability	Predictably applicable rules	Probabilistic, contextual decisions	Instance vs. COMPAS system
Legitimacy of the decision	Legal authority, rational motivation	Algorithmic performance, without democratic legitimacy	Court decision vs. algorithmic risk score
Transparency	Understandable public motivation	Reasoned, partial transparency	Legal explanation vs. AI simplified report
Responsibility	Clearly attributed to a person	Shared or uncertain responsibility	Judge vs. developer + beneficiary
Stability of the decision	Based on precedent and continuity	Constant model retraining	Judicial practice vs. adaptive AI model

Reasoning	Normative, principle-based	Inductive, data-driven inference	Doctrinal Analysis vs. Bayes Inference
Democratic control	Appealable and verifiable	Opaque, difficult to audit	Court of appeal vs. lack of appeal mechanism
The role of the human factor	Central in interpretation and decision	Minimal or non-existent	Judge vs. Fully Automatic Decision

Finally, legal certainty must be understood today not only as a quality of the written norm, but as a quality of the entire decision-making ecosystem – regardless of whether the actor is human or artificial. Only through the responsible integration of technology into the normative tradition of law can we preserve those values that make justice not just a control mechanism, but a pillar of human dignity.

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